

AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JUNE 24, 2003

AMENDED IN ASSEMBLY APRIL 23, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 652**

**Introduced by Assembly Member Leno**

February 19, 2003

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An act to amend Section 4040 of, and to *add Section 1315 to, and to* repeal Sections 4041 and 4043 of, the Insurance Code, relating to ~~mutual insurers~~ *loans*, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 652, as amended, Leno. ~~Mutual insurers~~ *Insurers*: loans.

*Existing law provides that any persons may exchange reciprocal or interinsurance contracts with one another providing insurance among themselves against any loss that may be lawfully insured against, except as specified. Existing law generally regulates reciprocal and interinsurance exchanges.*

Existing law allows a mutual insurer to borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that the money is required to be repaid only out of the insurer's surplus in excess of that stipulated in the agreement. Existing law allows this type of agreement to provide for interest not exceeding a certain amount, and provides that

no commission or promotion expense shall be paid in connection with any of these loans. Existing law provides that money so borrowed, and interest thereon, shall not form part of the insurer's legal liabilities, except as specified, and requires that any loan of this type made to a mutual insurer be repaid when and to the extent it is no longer reasonably necessary, except as specified.

This bill would allow the type of agreement described above to be executed, in addition, by a reciprocal exchange or an interinsurance exchange. It would allow these types of agreements to provide for fixed or variable interest not exceeding an amount allowed by the Insurance Commissioner. The bill would require that any agreement provide that all payments require prior approval by the commissioner. It would permit the commissioner to allow a commission or promotion expense to be paid in connection with this type of loan, and would require conformity to specified accounting practices in the insurer's financial statements. The bill would eliminate the provisions of law relating to excluding these loans from the insurer's legal liabilities and repaying them when made to a mutual insurer.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1.   *Section 1315 is added to the Insurance Code, to*  
2     *read:*  
3     1315.   *A reciprocal exchange or interinsurance exchange may*  
4     *borrow money to defray the expenses of its organization, provide*  
5     *it with surplus funds, or for any purpose of its business, upon a*  
6     *written agreement that the money is required to be repaid only out*  
7     *of the exchange's surplus in excess of that stipulated in the*  
8     *agreement. The agreement may provide for fixed or variable*  
9     *interest not exceeding an amount allowed by the commissioner,*  
10    *which interest shall or shall not constitute a liability of the*  
11    *exchange as to its funds other than the excess that is stipulated in*  
12    *the agreement. Any agreement of this type shall provide that all*  
13    *interest payments and principal repayments require prior approval*  
14    *by the commissioner. Unless otherwise approved by the*  
15    *commissioner, written agreements evidencing this borrowed*



1 *money shall not be issued in units of less than ten thousand dollars*  
2 *(\$10,000). Unless otherwise allowed by the commissioner, no*  
3 *commission or promotion expense shall be paid in connection with*  
4 *any loan of this type. An agreement to borrow money to provide*  
5 *surplus funds, or for any business purpose, may be termed a*  
6 *surplus note. No surplus note or other agreement may be issued*  
7 *unless it conforms to the requirements set forth at the time the note*  
8 *is issued in the Accounting Practices and Procedures Manual*  
9 *adopted by the National Association of Insurance Commissioners*  
10 *for the reporting of agreements as surplus and not as debt in the*  
11 *financial statements required to be filed by an insurer with the*  
12 *commissioner. No permit or other agreement shall constitute*  
13 *authorization or approval for any other issuance of securities that*  
14 *is connected to the note or agreement in any way.*

15 SEC. 2. Section 4040 of the Insurance Code is amended to  
16 read:

17 4040. A mutual insurer may borrow money to defray the  
18 expenses of its organization, provide it with surplus funds, or for  
19 any purpose of its business, upon a written agreement that the  
20 money is required to be repaid only out of the insurer's surplus in  
21 excess of that stipulated in the agreement. The agreement may  
22 provide for fixed or variable interest not exceeding an amount  
23 allowed by the commissioner, which interest shall or shall not  
24 constitute a liability of the insurer as to its funds other than the  
25 excess that is stipulated in the agreement. Any agreement of this  
26 type shall provide that all interest payments and principal  
27 repayments require prior approval by the commissioner. Unless  
28 otherwise approved by the commissioner, written agreements  
29 evidencing this borrowed money shall not be issued in units of less  
30 than ten thousand dollars (\$10,000). Unless otherwise allowed by  
31 the commissioner, no commission or promotion expense shall be  
32 paid in connection with any loan of this type. An agreement to  
33 borrow money to provide surplus funds, or for any business  
34 purpose, may be termed a surplus note ~~or other agreement. No~~  
35 ~~surplus note.~~ *No surplus note or other agreement may be issued*  
36 *unless it conforms to the requirements set forth at the time the note*  
37 *is issued in the Accounting Practices and Procedures Manual*  
38 *adopted by the National Association of Insurance Commissioners*  
39 *for the reporting of agreements as surplus and not as debt in the*  
40 *financial statements required to be filed by an insurer with the*

1 commissioner. *No permit or other agreement shall constitute*  
2 *authorization or approval for any other issuance of securities that*  
3 *is connected to the note or agreement in any way.*

4 ~~SEC. 2.~~

5 SEC. 3. Section 4041 of the Insurance Code is repealed.

6 ~~SEC. 3.~~

7 SEC. 4. Section 4043 of the Insurance Code is repealed.

8 ~~SEC. 4.~~

9 SEC. 5. This act is an urgency statute necessary for the  
10 immediate preservation of the public peace, health, or safety  
11 within the meaning of Article IV of the Constitution and shall go  
12 into immediate effect. The facts constituting the necessity are:

13 In order to promote to the financial stability and solvency of  
14 ~~mutual~~ insurers, it is necessary that this act take effect  
15 immediately.

